

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 290 (Sub-No. 389X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN ROANOKE, VA.

Decided: May 25, 2017

Norfolk Southern Railway Company (NSR) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon an approximately 0.5-mile line of railroad, between mileposts R 4.0 and R 4.5, in Roanoke, Va. Notice of the exemption was served and published in the Federal Register on March 23, 2017 (82 Fed. Reg. 14,938). The exemption was scheduled to become effective on April 22, 2017, unless stayed by the Board or unless a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. § 10904 and 49 C.F.R. § 1152.27(c)(2) was filed by April 3, 2017.

On April 13, 2017, Thoroughbred Energy & Environmental Corporation (Thoroughbred) filed a notice of intent to file an OFA.¹ On April 19, 2017, NSR and the City of Roanoke, Va., filed letters objecting to the notice of intent. On April 21, 2017, Walker Machine & Foundry Corporation (Walker), an entity with property adjacent to the line at issue, filed a letter stating, among other things, that it owns the underlying property and that NSR merely has an easement limited to railroad purposes.

After issuing a housekeeping stay and considering additional filings from both NSR and Thoroughbred, the Board accepted Thoroughbred's late-filed notice of intent and lifted the housekeeping stay. Norfolk S. Ry.—Aban. Exemption—in Roanoke, Va., AB 290 (Sub-No. 389X) (STB served May 5, 2017). In addition, the Board directed NSR to provide access to the documents described in 49 C.F.R. § 1152.27(d), set May 25, 2017, as the deadline for

¹ Thoroughbred's filings in this proceeding have been submitted by its owner, David L. Foster. (See Thoroughbred Notice of Intent 1.) NSR objects to Mr. Foster filing on behalf of Thoroughbred because the Board's rules at 49 C.F.R. § 1103.2 to § 1103.3 limit who can represent individuals before the agency to licensed attorneys and Board practitioners, and NSR claims that Mr. Foster is neither. (NSR Reply 2 n.1, May 23, 2017.) Because, however, "a corporation cannot represent itself per se, an officer or director, if properly authorized by the corporation, may represent a corporation in Board proceedings." Codorus Creek Ry.—Feeder Line Application—Stewartstown R.R., FD 35071, slip op. at 1 (STB served Apr. 13, 2010). The Board will permit Mr. Foster, as the owner of Thoroughbred, to represent his corporation before the Board.

Thoroughbred to file an OFA, and set June 4, 2017, as the effective date of the abandonment exemption.

On May 11, 2017, NSR provided Thoroughbred with information to prepare and file an OFA; on May 16 and 17, 2017, NSR also provided supplements in response to Thoroughbred's requests for clarification. (Thoroughbred Request 3, May 22, 2017; NSR Reply 2-3, May 23, 2017.) On May 22, 2017, Thoroughbred filed a request to toll the time period to file an OFA for 14 business days, until June 14, 2017, and on May 23, 2017, NSR replied in opposition to Thoroughbred's request.

Thoroughbred states that it needs additional time to consider two issues it says were raised by the materials provided by NSR. (Thoroughbred Request 2-3, May 22, 2017.) First, Thoroughbred explains that throughout this proceeding it has relied chiefly on a map found in NSR's Environmental Report, but the endpoints of the abandonment segment on that map are inconsistent with the endpoints on maps subsequently provided to Thoroughbred by NSR for OFA purposes. Second, Thoroughbred states that it needs additional time to resolve the conflicting ownership claim made by Walker.

NSR replies that it promptly provided the requested OFA information pursuant to 49 C.F.R. § 1152.27. Regarding the accuracy of the maps, NSR maintains that Thoroughbred has relied on an inaccurate map generated "for reference purposes only" by the Board's Office of Environmental Analysis (OEA), which was attached to OEA's Environmental Assessment, and that the maps submitted by NSR to the Board and Thoroughbred throughout the proceeding have been accurate and consistent in depicting the endpoints. (NSR Reply 4, May 23, 2017.) Concerning the ownership claim made by Walker, NSR states that it has provided Thoroughbred with numerous deeds to support the claim that it owns the real estate in fee simple. Moreover, NSR argues that if Thoroughbred disagrees with the value and quality of the title, such a disagreement should not delay the submission of an OFA because the offer can be based on Thoroughbred's own beliefs as to the quality of the title. (*Id.* at 5-6.)

Ordinarily, the Board requires strict adherence to its regulatory time frames for the disposition of abandonment proceedings. These time frames are derived from strict statutory deadlines, which reflect Congressional intent that rail carriers not be burdened with unprofitable lines for any longer than necessary. Moreover, while Thoroughbred expresses concerns over the conflicting ownership claims, that dispute does not need to be resolved for Thoroughbred to file an OFA, as Thoroughbred's OFA may reflect its belief as to the quality of the title that NSR holds. As such, the dispute over NSR's property interest should not impede the filing of an OFA.² Accordingly, the Board will not grant Thoroughbred's request to toll the OFA filing period for 14 business days.

However, the circumstances here warrant a short extension of Thoroughbred's OFA filing deadline. Given that there has been some inconsistency in the depiction of the east

² Indeed, the Board has set terms and conditions while the issue of marketable title to the real estate is unresolved. E. Penn R.R.—Aban. Exemption—in Berks & Montgomery Ctys., Pa., AB 1020X, slip op at. 5-7 (STB served Jan. 28, 2009).

endpoint of the line in the maps associated with this proceeding, the Board finds good cause to extend the OFA filing deadline for seven calendar days, until June 1, 2017. NSR has recently provided Thoroughbred with maps that clarify the endpoints of the line, and Thoroughbred should submit its OFA based on that most recent map information.

It is ordered:

1. Thoroughbred must file its OFA no later than June 1, 2017.
2. The effective date of the abandonment exemption is extended to June 11, 2017.
3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.